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Attorneys for Defendants
PRESTIGE CONSUMER HEALTHCARE INC.
(fka "Prestige Brands Holdings, Inc.") and
MEDTECH PRODUCTS INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

L.A. INTERNATIONAL CORP.,
MANHATTAN WHOLESALE INC.,
EXCEL WHOLESALE DISTRIBUTORS
INC., VALUE DISTRIBUTOR, INC.,
BORDER CASH & CARRY, INC., AKR
CORPORATION, U.S. WHOLESALE
OUTLET & DISTRIBUTION, INC.;
SANOOR, INC. (d/b/a L.A. TOP
DISTRIBUTOR); PITTSBURG
WHOLESALE GROCERS, INC.; and
PACIFIC GROSERVICE, INC.

Plaintiffs,

v.

PRESTIGE BRANDS HOLDINGS, INC.
and MEDTECH PRODUCTS INC.,

Defendants.

Case No.: 2:18-cv-06809-MWF-MRW

**DEFENDANT MEDTECH
PRODUCTS INC.'S REDACTED
ANSWER AND AFFIRMATIVE
DEFENSES TO AMENDED
COMPLAINT**

**REDACTED PURSUANT TO
COURT ORDER DATED
OCTOBER 23, 2018**

Complaint Filed: August 8, 2018
FAC Filed: August 20, 2018
Current response: October 19, 2018

1 Defendant MEDTECH PRODUCTS INC. (“Medtech” or “Defendant”) hereby
2 answers the Amended Complaint filed by Plaintiffs L.A. INTERNATIONAL CORP.,
3 MANHATTAN WHOLESALE INC., EXCEL WHOLESALE DISTRIBUTORS
4 INC., VALUE DISTRIBUTOR, INC., BORDER CASH & CARRY, INC., AKR
5 CORPORATION, U.S. WHOLESALE OUTLET & DISTRIBUTION, INC.;
6 SANOOR, INC. (d/b/a L.A. TOP DISTRIBUTOR); PITTSBURG WHOLESALE
7 GROCERS, INC.; and PACIFIC GROSERVICE, INC. (collectively “Plaintiffs”), as
8 follows:

9 1. The allegations in paragraph 1 constitute a legal conclusion to which no
10 response is required.

11 2. The allegations in paragraph 2 constitute a legal conclusion to which no
12 response is required.

13 3. Medtech states that it lacks information or belief sufficient to respond
14 and on that basis denies, both generally and specifically, the allegations regarding the
15 location of Plaintiffs’ principal places of business contained in paragraph 3. The
16 remaining allegations in paragraph 3 constitute a legal conclusion to which no
17 response is required.

18 4. Medtech states that it is not required to respond to Plaintiffs’ citations to
19 the Robinson-Patman Act, 15 U.S.C. § 13 (“RPA”), or the decision issued by the
20 Supreme Court in *FTC v. Morton Salt Co.*, 334 U.S. 37 (1948), as this authority
21 speaks for itself. Medtech also states that it is not required to respond to the legal
22 conclusions and argument included in paragraph 4.

23 5. Medtech admits that it is the supplier of the product Clear Eyes®
24 Redness Relief Brand eye drops (hereinafter “Clear Eyes®”). Medtech denies the
25 remaining allegations in paragraph 5.

26 6. Medtech denies Plaintiffs’ statement that Medtech has ever engaged in
27 illegal discrimination. Medtech states that it lacks information or belief sufficient to

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1 respond and on that basis denies, both generally and specifically, the remaining
2 allegations contained in paragraph 6.

3 7. Medtech admits that Plaintiffs seek the relief they state in paragraph 7,
4 but denies that Plaintiffs are entitled to such relief.

5 8. Medtech states that it is not required to respond to the legal conclusions
6 and argument included in paragraph 8. To the extent a response is required, Medtech
7 lacks sufficient knowledge or information to form a belief as to the truth of the
8 allegations, and on that basis denies them.

9 9. Medtech states that it is not required to respond to the legal conclusions
10 and argument included in paragraph 9. To the extent a response is required, Medtech
11 lacks sufficient knowledge or information to form a belief as to the truth of the
12 allegations, and on that basis denies them.

13 10. Medtech states that it is not required to respond to the legal conclusions
14 and argument included in paragraph 10. To the extent a response is required, Medtech
15 lacks sufficient knowledge or information to form a belief as to the truth of the
16 allegations, and on that basis denies them.

17 11. Medtech states that it is not required to respond to the legal conclusions
18 and argument included in paragraph 11. To the extent a response is required, Medtech
19 lacks sufficient knowledge or information to form a belief as to the truth of the
20 allegations, and on that basis denies them.

21 12. Medtech states that it is not required to respond to the legal conclusions
22 and argument included in paragraph 12. To the extent a response is required, Medtech
23 lacks sufficient knowledge or information to form a belief as to the truth of the
24 allegations, and on that basis denies them.

25 13. Medtech states that it is not required to respond to the text cited by
26 Plaintiffs from the Congressional Record, which speaks for itself. Nor is Medtech
27 required to respond to the legal conclusions and argument included in paragraph 13.
28 To the extent a response is required, Medtech lacks sufficient knowledge or

1 information to form a belief as to the truth of the allegations, and on that basis denies
2 them.

3 14. Medtech states that it is not required to respond to the text cited by
4 Plaintiffs from the Congressional Record, which speaks for itself. Nor is Medtech
5 required to respond to the legal conclusions and argument included in paragraph 14.
6 To the extent a response is required, Medtech lacks sufficient knowledge or
7 information to form a belief as to the truth of the allegations, and on that basis deny
8 them.

9 15. Medtech states that it is not required to respond to the legal conclusions
10 and argument included in paragraph 15. To the extent a response is required, Medtech
11 lacks sufficient knowledge or information to form a belief as to the truth of the
12 allegations, and on that basis denies them.

13 16. Medtech states that it is not required to respond to Plaintiffs' cited
14 authority, *Chroma Lighting v. GTE Products Corp.*, 111 F.3d 653 (9th Cir. 1997),
15 which speaks for itself. Nor is Medtech required to respond to the legal conclusions
16 and argument included in paragraph 16. To the extent a response is required, Medtech
17 lacks sufficient knowledge or information to form a belief as to the truth of the
18 allegations, and on that basis denies them.

19 17. Medtech denies Plaintiffs' allegations that "the competitive landscape
20 and individual consumers themselves have *also* been harmed by Medtech's illegal
21 price discrimination" and that Medtech failed to comply with "the Robinson-Patman
22 Act and California law." Medtech states that it lacks information or belief sufficient
23 to respond and on that basis denies, both generally and specifically, each of the
24 remaining allegations contained in paragraph 17.

25 18. Medtech denies the allegations in paragraph 18.

26 19. Medtech lacks sufficient knowledge or information to form a belief as to
27 the truth of the allegations in paragraph 19, and on that basis denies them.

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1 20. Medtech lacks sufficient knowledge or information to form a belief as to
2 the truth of the allegations in paragraph 20, and on that basis denies them.

3 21. Medtech lacks sufficient knowledge or information to form a belief as to
4 the truth of the allegations in paragraph 21, and on that basis denies them.

5 22. Medtech lacks sufficient knowledge or information to form a belief as to
6 the truth of the allegations in paragraph 22, and on that basis denies them.

7 23. Medtech lacks sufficient knowledge or information to form a belief as to
8 the truth of the allegations in paragraph 23, and on that basis denies them.

9 24. Medtech lacks sufficient knowledge or information to form a belief as to
10 the truth of the allegations in paragraph 24, and on that basis denies them.

11 25. Medtech lacks sufficient knowledge or information to form a belief as to
12 the truth of the allegations in paragraph 25, and on that basis denies them.

13 26. Medtech lacks sufficient knowledge or information to form a belief as to
14 the truth of the allegations in paragraph 26, and on that basis denies them.

15 27. Medtech lacks sufficient knowledge or information to form a belief as to
16 the truth of the allegations in paragraph 27, and on that basis denies them.

17 28. Medtech states that Prestige Consumer Healthcare Inc. (fka “Prestige
18 Brands Holdings, Inc.”) is a publically traded company, incorporated in Delaware
19 with its principal place of business in Tarrytown, New York, whose indirect
20 subsidiaries market and distribute brand name over-the-counter healthcare products,
21 including Clear Eyes® brand products. Medtech denies, both generally and
22 specifically, each of the remaining allegations contained in paragraph 28.

23 29. Medtech states that it is a Delaware corporation with its principal place of
24 business in Tarrytown, New York, and that it is a wholly-owned indirect subsidiary of
25 Prestige Consumer Healthcare Inc. Medtech admits all other allegations in paragraph
26 29.

27 30. Medtech lacks sufficient knowledge or information to form a belief as to
28 the truth of the allegations in paragraph 30, and on that basis denies them.

1 31. Medtech lacks sufficient knowledge or information to form a belief as to
2 the truth of the allegations in paragraph 31, and on that basis denies them.

3 32. Medtech admits that it is the supplier of Clear Eyes® brand products
4 throughout the time period allegedly at issue in this matter. Medtech also admits that
5 its Clear Eyes® Redness Relief Pocket Pal product is sold in a 0.2 oz container, at
6 retail locations across the United States, and that it can be purchased directly from
7 Medtech in 12-unit packs. Except as expressly admitted, Medtech lacks sufficient
8 knowledge or information to form a belief as to the truth of all other allegations in
9 paragraph 32, and on that basis denies them.

10 33. Medtech admits that the 2014 Annual Fiscal Report published by Prestige
11 Consumer Healthcare Inc. stated that Clear Eyes® held the #2 market position and
12 21% of the total market share for the eye care product category. Medtech also admits
13 that the 2018 Annual Fiscal Report published by Prestige Consumer Healthcare Inc.
14 stated that the Clear Eyes® brand held the #1 eye care product market position.
15 Except as expressly admitted, Medtech lacks sufficient knowledge or information to
16 form a belief as to the truth of all other allegations in paragraph 33, and on that basis
17 denies them.

18 34. The allegations in paragraph 34 constitute a legal conclusion to which no
19 response is required.

20 35. Medtech admits that it currently sells Clear Eyes® brand products
21 throughout the United States and in certain other countries. Medtech denies, both
22 generally and specifically, each of the remaining allegations contained in paragraph
23 35.

24 36. Medtech admits that Clear Eyes® can be purchased directly or through a
25 broker. Medtech denies, both generally and specifically, each of the remaining
26 allegations contained in paragraph 36.

27 37. Medtech admits that the unit price on the invoice for the purchase of
28 Clear Eyes® Redness Relief Pocket Pal product to Plaintiff L.A. Top was [REDACTED] on

1 February 1, 2017. Medtech states that it lacks information or belief sufficient to
2 respond and on that basis denies, both generally and specifically, each of the
3 remaining allegations contained in paragraph 37.

4 38. Medtech admits that the unit price on the invoice for the purchase of
5 Clear Eyes® Redness Relief Pocket Pal product to Plaintiff L.A. International was
6 [REDACTED] on March 31, 2018. Medtech also admits that it periodically offered
7 [REDACTED]

8 [REDACTED] Medtech states that it lacks
9 information or belief sufficient to respond and on that basis denies, both generally and
10 specifically, each of the remaining allegations contained in paragraph 38.

11 39. Medtech admits that it periodically offered [REDACTED]
12 [REDACTED]
13 [REDACTED] Medtech denies, both generally and
14 specifically, each of the remaining allegations contained in paragraph 39.

15 40. Medtech admits that Plaintiffs and others were [REDACTED]
16 [REDACTED] for Clear Eyes® Redness Relief
17 Pocket Pal product. [REDACTED]
18 [REDACTED] Medtech denies, both
19 generally and specifically, each of the remaining allegations contained in paragraph
20 40.

21 41. The allegations in paragraph 41 constitute a legal conclusion to which no
22 response is required. To the extent a response is required, Medtech lacks sufficient
23 knowledge or information to form a belief as to the truth of all allegations in
24 paragraph 41, and on that basis denies them.

25 42. The allegations in paragraph 42 constitute a legal conclusion to which no
26 response is required. To the extent a response is required, Medtech lacks sufficient
27 knowledge or information to form a belief as to the truth of all allegations in
28 paragraph 42, and on that basis denies them.

1 43. Medtech admits that it periodically offered [REDACTED]

2 [REDACTED]
3 [REDACTED] The other allegations in paragraph 43
4 constitute a legal conclusion to which no response is required. To the extent a
5 response is required, Medtech lacks sufficient knowledge or information to form a
6 belief as to the truth of all other allegations in paragraph 43, and on that basis denies
7 them.

8 44. The allegations in paragraph 44 constitute a legal conclusion to which no
9 response is required. To the extent a response is required, Medtech lacks sufficient
10 knowledge or information to form a belief as to the truth of all allegations in
11 paragraph 44, and on that basis denies them.

12 45. Medtech lacks sufficient knowledge or information to form a belief as to
13 the truth of all allegations in paragraph 45, and on that basis denies them.

14 46. The allegations in paragraph 46 constitute a legal conclusion to which no
15 response is required. To the extent a response is required, Medtech lacks sufficient
16 knowledge or information to form a belief as to the truth of all allegations in
17 paragraph 46, and on that basis denies them.

18 47. Medtech admits that the 2018 Annual Fiscal Report published by Prestige
19 Consumer Healthcare Inc. stated that the Clear Eyes® brand held the #1 eye care
20 product market position. Except as expressly admitted, Medtech lacks sufficient
21 knowledge or information to form a belief as to the truth of all allegations in
22 paragraph 46, and on that basis denies them.

23 48. Medtech admits that it does not disclose prices for Clear Eyes® brand
24 products made available to other customers and will take all reasonable and necessary
25 steps to protect its trade secrets. The other allegations in paragraph 48 constitute a
26 legal conclusion to which no response is required. To the extent a response is
27 required, Medtech lacks sufficient knowledge or information to form a belief as to the
28 truth of all allegations in paragraph 48, and on that basis denies them.

FIRST CLAIM FOR RELIEF

(Robinson-Patman Act, 15 U.S.C. § 13(a))

49. Medtech reincorporates and re-alleges each of the above responses to the allegations in the First Amended Complaint as though fully set forth herein.

50. Medtech denies the allegations in paragraph 50.

51. The allegations in paragraph 51 constitute a legal conclusion to which no response is required. To the extent a response is required, Medtech denies the allegations in paragraph 51.

52. The allegations in paragraph 52 constitute a legal conclusion to which no response is required. To the extent a response is required, Medtech denies the allegations in paragraph 52.

53. The allegations in paragraph 53 constitute a legal conclusion to which no response is required. To the extent a response is required, Medtech denies the allegations in paragraph 53.

54. The allegations in paragraph 54 constitute a legal conclusion to which no response is required. To the extent a response is required, Medtech denies the allegations in paragraph 54.

55. Medtech denies the allegations in paragraph 55.

SECOND CLAIM FOR RELIEF

(Robinson-Patman Act, 15 U.S.C. § 13(d))

56. Medtech reincorporates and re-alleges each of the above responses to the allegations in the Amended Complaint as though fully set forth herein.

57. The allegations in paragraph 57 constitute a legal conclusion to which no response is required. To the extent a response is required, Medtech admits that it periodically offered [REDACTED]

[REDACTED] Medtech denies, both generally and specifically, each of the remaining allegations contained in paragraph 57.

1 58. Medtech denies the allegations in paragraph 58.

2 **THIRD CLAIM FOR RELIEF**

3 **(California Unfair Practices Act, Cal. Bus. & Prof. Code § 17045)**

4 59. Medtech reincorporates and re-alleges each of the above responses to the
5 allegations in the Amended Complaint as though fully set forth herein.

6 60. Medtech admits that “Plaintiffs have never been told by either Medtech
7 or its brokers that it grants a lower price to Costco and Sam’s Club.” Medtech denies,
8 both generally and specifically, each of the remaining allegations contained in
9 paragraph 60.

10 61. Medtech denies the allegations in paragraph 61.

11 62. Medtech denies the allegations of illegal price discrimination. Medtech
12 lacks sufficient knowledge or information to form a belief as to the truth of the
13 remaining allegations in paragraph 62, and on that basis denies them.

14 63. Medtech denies the allegations in paragraph 63.

15 **FOURTH CLAIM FOR RELIEF**

16 **(California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200)**

17 64. Defendants reincorporate and re-allege each of the above responses to the
18 allegations in the Amended Complaint as though fully set forth herein.

19 65. The allegations in paragraph 65 constitute a legal conclusion to which no
20 response is required. To the extent a response is required, Medtech denies the
21 allegations.

22 66. The allegations in paragraph 66 constitute a legal conclusion to which no
23 response is required. To the extent a response is required, Medtech denies the
24 allegations.

25 **PRAYER**

26 Medtech denies that Plaintiffs are entitled to any relief.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Functional Discount)

The price difference and promotional payments Medtech made available to Costco or Sam's Club were provided and justified as functional discounts. "A seller may charge a buyer reduced prices if the reduced prices reflect a bona fide "functional discount"—in essence, a set-off for the value of services the purchaser performs for the seller." *Coalition for a Level Playing Field LLC. v. Autozone, Inc.*, 737 F. Supp. 2d 194, 201 (S.D.N.Y. 2010); *Texaco v. Hasbrouck*, 496 U.S. 543, 556 (1990).

SECOND AFFIRMATIVE DEFENSE

(Materially Different Contract Terms)

There is no violation of the Robinson-Patman Act or California's Unfair Competition Act where, as here, the different prices for Clear Eyes® charged to Costco or Sam's Club is based on contracts that have materially different terms from the contracts between Medtech and Plaintiffs. *Texas Gulf Sulphur Co. v. J.R. Simplot Co.*, 418 F.2d 793, 805-06 (9th Cir. 1969).

THIRD AFFIRMATIVE DEFENSE

(Meeting Competition in Good Faith)

Plaintiffs' claims are barred, in whole or in part, because Medtech's alleged acts or omissions resulting in price discrimination were committed in good faith and justified to meet a competing seller's price. *William Inglis & Sons Baking Co. v. ITT Continental Baking Co.*, 668 F.2d 1014 (9th Cir. 1981).

FOURTH AFFIRMATIVE DEFENSE

(Operations Were Not Contemporaneous)

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs were not customers of Medtech at the time that prices were awarded to other enterprises. *England v. Chrysler Corp.*, 493 F.2d 269, 272 (9th Cir. 1974).

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FIFTH AFFIRMATIVE DEFENSE

(Functional Availability)

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to take commercially reasonable steps to "take advantage of" the incentives offered to other enterprises. *Tri-Valley Packing Ass'n v. F.T.C.*, 329 F.2d 694, 703-04 (9th Cir. 1964).

SIXTH AFFIRMATIVE DEFENSE

(No Harm To Competition)

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs cannot show that "the effect of [the alleged] price discrimination may be substantially to lessen competition." 15 U.S.C. § 13(a); *J. Truett Payne Co. v. Chrysler Motors Corp.*, 451 U.S. 557, 562 (1981). Plaintiffs also cannot establish a "harm to competition" because they cannot show that "a substantial price discrimination existed between" Plaintiffs and their alleged competitors "over a period of time." *FTC v. Morton Salt Co.*, 334 U.S. 37, 43-44 (1948); *Hasbrouck v. Texaco, Inc.* 842 F.2d 1034, 1041 (1987).

SEVENTH AFFIRMATIVE DEFENSE

(Cost Justification)

Plaintiffs' claims are barred, in whole or in part, because the alleged price discrimination, if any, "make[s] only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods of quantities in which [Clear Eyes®] are... sold or delivered." 15 U.S.C. § 13(a); *Uniroyal, Inc. v. Hoff and Thames, Inc.*, 511 F. Supp. 1060, 1071 (1981); *United States v. Borden Co.*, 370 U.S. 460 (1962).

EIGHTH AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiffs' Amended Complaint, and each claim alleged therein, fails to state a legally cognizable claim for relief.

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NINTH AFFIRMATIVE DEFENSE

(Fault of Third Parties)

Plaintiffs' claims are barred, in whole or in part, due to the fault of one or more parties not named in this action.

TENTH AFFIRMATIVE DEFENSE

(Plaintiffs' Acts or Omissions)

Plaintiffs' claims are barred, in whole or in part, because any alleged damages were caused, in whole or in part, by Plaintiffs' own acts or omissions.

ELEVENTH AFFIRMATIVE DEFENSE

(Damages Too Speculative and Remote)

Each of the Plaintiffs' claims are barred, in whole or in part, because the damages sought are too speculative and remote, and because Plaintiffs have failed to disaggregate damages attributable to Medtech's alleged conduct.

TWELFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Each of the Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to mitigate, or attempt to mitigate their alleged damages from their alleged lost sales in any way.

THIRTEENTH AFFIRMATIVE DEFENSE

(Fair and Lawful Competition)

Plaintiffs' claims under California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, et seq.) are barred in whole or in part because Medtech's actions were not unlawful, unfair or fraudulent. Medtech is permitted to engage in fair competition. *Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163 (1999).

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FOURTEENTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

Medtech reserves the right to amend this Answer to assert additional defenses, cross-claims, counterclaims, or other defenses as discovery proceeds.

Dated: October 24, 2018

Respectfully submitted,
DUANE MORRIS LLP

By: _____/s/ Robert Kum
Michael L. Fox
Robert Kum
Sean Patterson
Attorneys for Defendants
PRESTIGE CONSUMER HEALTHCARE
INC. (fka "Prestige Brands Holdings, Inc.")
and MEDTECH PRODUCTS INC.

DISCLOSURE STATEMENT

Defendant Medtech Products Inc. discloses, pursuant to Federal Rule of Civil Procedure 7.1, that Medtech Products Inc. is a wholly-owned indirect subsidiary of Prestige Consumer Healthcare Inc., which is a publicly held corporation.

Dated: October 24, 2018

Respectfully submitted,
DUANE MORRIS LLP

By: /s/ Robert Kum
Michael L. Fox
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PRESTIGE CONSUMER HEALTHCARE
INC. (fka “Prestige Brands Holdings, Inc.”)
and MEDTECH PRODUCTS INC.